

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

RONALD BEACHUM,

Plaintiff,

v.

No. CIV 15-0534 MV/KK

JAMES FRAWNER, Warden,  
M. SOTO, Lieutenant,  
S. WESLEY, Disciplinary Hearing Officer,  
G. VALLE, Disciplinary Officer,

Defendants.

**MEMORANDUM OPINION AND ORDER**  
**TO PAY FILING FEE OR SHOW CAUSE**

This matter is before the Court, *sua sponte* under 28 U.S.C. § 1915(g) on initial consideration of Plaintiff's civil rights complaint and Application to Proceed in District Court Without Prepaying Fees or Costs (Doc. 2). For reasons below, the Court will deny the application and, pursuant to the "three strikes" provisions of § 1915(g), require Plaintiff to pay the full filing fee.

Under 28 U.S.C. § 1915(g), a prisoner may not bring a complaint in forma pauperis if three or more previous complaints by the prisoner have been dismissed as frivolous or for failure to state a claim. The pertinent subsection reads:

In no event shall a prisoner bring a civil action . . . under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action . . . that was dismissed on the grounds that it is frivolous . . . or fails to state a claim . . . , unless the prisoner is under imminent danger of serious physical injury.

§ 1915(g). "Our determination that a particular dismissal constitutes a strike is not formalistic or mechanical; rather, we must consider the nature of the dismissal and, if the district court did not

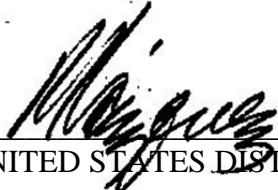
make it clear, whether the dismissal fits within the language of § 1915(g).” *Hafed v. Federal Bureau of Prisons*, 635 F.3d 1172, 1178 (10th Cir. 2010). “[D]ismissal based on lack of exhaustion . . . may constitute a strike for purposes of 28 U.S.C. § 1915(g).” *Steele v. Federal Bureau of Prisons*, 355 F.3d 1204, 1210-1213 (10th Cir. 2003) (citing *Jennings v. Natrona County Det. Ctr. Med. Facility*, 175 F.3d 775, 778-81 (10th Cir. 1999)). And “a . . . strike [may be] based on the district court’s partial dismissal of two counts for failure to state a claim.” *Thomas v. Parker*, 672 F.3d 1182, 1183-84 (10th Cir. 2012); and see *Green v. Nottingham*, 90 F.3d 415, 418 (10th Cir. 1996) (“court may take judicial notice of the prior litigation.”).

The Court had dismissed at least three of Plaintiff’s previous complaints before he initiated the instant action, and he was incarcerated when he filed each of his complaints. In *Beachum v. Crime Victims Reparation Commission*, No. CV 10-0857 MV/RLP (Doc. 9), the Court dismissed Plaintiff’s complaint against the Defendant as frivolous. In *Beachum v. Williams*, No. CV 02-1549 LH/ACT (Doc. 22), and *Beachum v. Williams*, No. CV 03-1011 WJ/ACT (Docs. 35, 37), the Court dismissed Plaintiff’s claims for failure to exhaust administrative remedies. And in *Beachum v. Johnson*, No. CV 01-0695 MV/DJS (Docs. 22, 44, 45), the Court dismissed most of Plaintiff’s claims for failure to state a constitutional claim, and ultimately dismissed the entire complaint. Each of the referenced dismissals clearly “fits within the language of § 1915(g),” *Hafed v. Federal Bureau of Prisons*, 635 F.3d at 1178, and thus each counts as a strike. Plaintiff’s current complaint does not allege that he “is under imminent danger of serious physical injury.” § 1915(g).

According to the terms of § 1915(g), the referenced prior dismissals of Plaintiff’s complaints prevent him from proceeding in forma pauperis in this action. He must pay the filing fee, see *Pigg v. FBI*, 106 F.3d 1497, 1497 (10th Cir. 1997), or show cause why his complaint

should not be dismissed, *see Owens-El v. United States*, 49 F. App'x 247, 249 (10th Cir. 2002). Failure to adequately respond to this Order may result in dismissal of Plaintiff's complaint.

IT IS THEREFORE ORDERED that Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs (Doc. 2) is DENIED, and, within twenty-one (21) days from entry of this Order, Plaintiff must pay the statutory filing fee of \$400.00 or show cause, if any, why the Court should not dismiss his complaint.

  
UNITED STATES DISTRICT JUDGE